

REMARKS/ARGUMENTS**Claim Rejections****35 USC 103(a)****Bassett in view of Britt, Jr.**

Examiner has rejected Claims 155-198 under 35 USC 103(a) as being unpatentable over Bassett in view of Britt Jr. and other references. Specifically regarding Claims 155, 186, 195, 198, Examiner states that Bassett shows all the elements with the exception that

Bassett does not show that the remote computer connected to the interface signal converter can be used to download software to the spa controller. ... Britt Jr discloses a system for downloading software to client workstations on an as needed basis via satellite or via the internet (Figure 9). ... It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the software downloading capability of Britt Jr. as a way to upgrade the client software of Bassett because automated upgrades in software prevent such problems as outdated software, inconvenient personal use to install manual upgrades, forgetful users, and additions problems as cited in Col 1, lines 37 – 56 of Britt Jr.

In response, Applicant submits that it would not be obvious to combine Britt Jr. with Bassett to achieve Applicant's invention.

There is No Suggestion to Combine or Modify the References

In order to show obviousness, it is necessary for the Examiner to show some reason, suggestion, or motivation from the prior art as a whole for the person of ordinary skill to have combined or modified the references.

... it is the duty of the examiner to explain why combination of the reference teaching is proper....Absent such reasons or incentives, the teachings of the references are not combinable. *Ex parte Skinner*, 2 USPQ 2d 1788, 1790 (B.P.A.I. 1987)

As stated in Britt Jr.'s Abstract, Britt Jr. discloses downloading software to a client, "which may be a set-top box or a personal computer". A set-top box is a device that enables a television set to become a user interface to the Internet and also enables a television set to receive and decode digital television (DTV) broadcasts. DTV set-top boxes are sometimes called receivers. Conversely, Bassett shows a home automation system for connecting appliances and does not discuss software download.

Applicant submits that Examiner has improperly combined Britt Jr. and Bassett in an effort to show downloading and uploading of information and software to a spa controller. The combination was made without providing a reason, suggestion or motivation for the combination.

Applicant submits that it is improper to combine the references because there is no reason or suggestion for the combination. Applicant is not claiming that he is the first to a home automation system or the first to invent downloading or upgrading software via the Internet to a personal computer or a set-top box. Applicant realizes that this technology has long been in existence. However, Applicant is the first to invent

A spa, comprising:

- A) a spa controller,
 - B) a interface signal converter, electrically connected to said spa controller, and
 - C) a remote computer connected to said interface signal converter via a communications link, wherein said remote computer is used to download software to said spa controller.
- wherein said interface signal converter converts communication signals transferred from said remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to said remote computer via said communications link.
(emphasis added)

Nowhere in Britt Jr. or in Bassett, is there any suggestion to combine Bassett and Britt Jr.'s methods to download or upgrade software to a spa in a manner disclosed and claimed by Applicant.

Nonanalogous Art

A holding of obviousness requires that the references relied upon by the Examiner are from art that is analogous to that of the invention. In the present case, Britt Jr. is concerned with downloading software to a set-top box or a personal computer. This technology is nonanalogous to spa technology. One of ordinary skill in the art would not be motivated to look to Britt Jr. or any other technology that dealt specifically with downloading software to a set-top box or a personal computer. Applicant's claimed

invention is concerned specifically with spas and spa related technology. References cited against Applicant should be only from related analogous technology.

Long Co-Existing Prior Art

Downloading and upgrading software via the Internet to a personal computer is a technology that has long been in existence. Programmable spa controllers have long been in existence. The spa manufacturing business is a very, very competitive business. Rival companies continually strive for a competitive edge to achieve an advantage in the marketplace. Nevertheless, no one thought of downloading software from a remote computer to a spa controller via a communications link until Applicant did it. If it had truly been obvious, as Examiner suggests, to combine Britt Jr. with Bassett to achieve Applicant's invention, it would have happened long before Applicant did it. To show obviousness, Examiner should be able to explain how Britt Jr. with Bassett could co-exist in a very competitive environment, yet no one ever created Applicant's invention prior to Applicant.

Claims 195 – 199

It should be noted that Britt Jr. discloses downloading software via the Internet to a personal computer or to a set-top box. These procedures are well known and make sense for personal computers and set-top boxes. However, it does not make sense to apply the teachings of Britt Jr. to a situation where a hand-portable remote computer (such as a palm pilot) is used to download software to a spa controller via a wireless link (such as an infrared link).

Prior to Applicant's invention, the prior art method of updating or replacing the software in a spa controller was accomplished by replacing a chip. This was a time consuming and delicate procedure and if not done properly could damage the chip or the spa controller. Applicant's invention has allowed software upgrade/download to a spa controller to be accomplished quickly, easily and inexpensively. The benefits of Applicant's invention have been tremendous. The prior art references cited by Examiner,

alone or in combination, do not show or suggest Applicant's invention. Therefore, Applicant's claims should be allowed.

Examiner's Comments Regarding Hand-Portable Computers

Examiner has rejected Claim 195 and 198 under 35 USC 103(a) as being unpatentable over Bassett in view of Britt Jr. Claims 195 and 198 are limited by a "hand-portable remote computer connected to said spa controller via said wireless communications link". Because Examiner has failed to show that either Bassett or Britt Jr. discloses a hand-portable remote computer, Applicant respectfully requests Examiner withdraw this rejection.

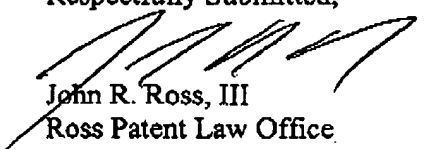
Claim 199

Examiner did not appear to Examine Claim 199. Applicant respectfully requests consideration of Claim 199.

CONCLUSION

Thus, for all the reasons given above, this application, as the claims are presently limited, defines a novel, patentable, and truly valuable invention. Hence allowance of all outstanding claims of this application is respectfully submitted to be proper and is respectfully solicited.

Respectfully Submitted,



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